

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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ERIC GERSBACHER ,

**NOTICE OF MOTION TO
DISMISS PURSUANT TO
F.R.C.P. RULE 12(B)(6)**

Plaintiff,

-against-

14 Civ. 7600 (GHW) (KNF)

THE CITY OF NEW YORK, et al.,

Defendants.

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PLEASE TAKE NOTICE that upon the annexed Declaration of Maryanne Carson dated April 7, 2015, and the exhibits attached thereto; defendants' Memorandum of Law, dated April 7, 2015; and upon all prior pleadings and proceedings had herein, defendants City of New York, Officer Alan Gonzalez and Inspector Edward Winski ("defendants") will move this court before the Honorable Gregory H. Woods, United States District Judge, at the United States Courthouse for the Southern District of New York, located at 500 Pearl Street, Room 9A, New York, New York, 10007, on May 5 2015, or on such other and later date as counsel may be heard, for the following relief: dismissal of the action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that 1. plaintiff has failed to state a claim upon which relief can be granted; and 2. defendants are entitled to qualified immunity from suit under applicable law.

In the alternative, defendants request that the motion be converted to a motion for summary judgment pursuant to Rule 12(d), and the action dismissed pursuant thereto; and that the Court grant such other and further relief as it deems just and proper.

PLEASE TAKE FURTHER NOTICE THAT pursuant to the Court's March 10, 2015 Order, opposition papers are to be served and filed by April 28, 2015. Reply papers are to be served and filed by May 5, 2015.

Dated: New York, New York
April 7, 2015

ZACHARY CARTER
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By: /s/
Maryanne Carson
Special Federal Litigation Division